

ASSEMBLY BILL

No. 1580

Introduced by Assembly Member Cogdill

February 21, 2003

An act to amend Section 3351 of, and to repeal Sections 3370 and 3371 of, the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1580, as introduced, Cogdill. Workers' compensation: state prison inmates.

Existing law provides that each inmate of a state penal or correctional institution shall be entitled to workers' compensation benefits for an injury arising out of, and in the course of, assigned employment and for the death of the inmate if the injury proximately causes death, subject to prescribed conditions.

This bill would repeal this provision and would make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3351 of the Labor Code is amended to
2 read:

3 3351. "Employee" means every person in the service of an
4 employer under any appointment or contract of hire or
5 apprenticeship, express or implied, oral or written, whether
6 lawfully or unlawfully employed, and includes all of the
7 following:

1 (a) Aliens and minors.

2 (b) All elected and appointed paid public officers.

3 (c) All officers and members of boards of directors of
4 quasi-public or private corporations while rendering actual service
5 for the corporations for pay; provided that, where the officers and
6 directors of the private corporation are the sole shareholders
7 ~~thereof of the corporation~~, the corporation and the officers and
8 directors shall come under the compensation provisions of this
9 division only by election as provided in subdivision (a) of Section
10 4151.

11 (d) Except as provided in subdivision (h) of Section 3352, any
12 person employed by the owner or occupant of a residential
13 dwelling whose duties are incidental to the ownership,
14 maintenance, or use of the dwelling, including the care and
15 supervision of children, or whose duties are personal and not in the
16 course of the trade, business, profession, or occupation of the
17 owner or occupant.

18 ~~(e) All persons incarcerated in a state penal or correctional~~
19 ~~institution while engaged in assigned work or employment as~~
20 ~~defined in paragraph (1) of subdivision (a) of Section 10021 of~~
21 ~~Title 8 of the California Code of Regulations, or engaged in work~~
22 ~~performed under contract.~~

23 ~~(f)~~ All working members of a partnership or limited liability
24 company receiving wages irrespective of profits from the
25 partnership or limited liability company; provided that where the
26 working members of the partnership or limited liability company
27 are general partners or managers, the partnership or limited
28 liability company and the partners or managers shall come under
29 the compensation provisions of this division only by election as
30 provided in subdivision (a) of Section 4151. If a private
31 corporation is a general partner or manager, “working members
32 of a partnership or limited liability company” shall include the
33 corporation and the officers and directors of the corporation,
34 provided that the officers and directors are the sole shareholders
35 of the corporation. If a limited liability company is a partner or
36 member, “working members of the partnership or limited liability
37 company” shall include the managers of the limited liability
38 company.

39 ~~(g)~~

(f) For the purposes of subdivisions (c) and (f) (e), the persons holding the power to revoke a trust as to shares of a private corporation or as to general partnership or limited liability company interests held in the trust, shall be deemed to be the shareholders of the private corporation, or the general partners of the partnership, or the managers of the limited liability company.

SEC. 2. Section 3370 of the Labor Code is repealed.

~~3370. (a) Each inmate of a state penal or correctional institution shall be entitled to the workers' compensation benefits provided by this division for injury arising out of and in the course of assigned employment and for the death of the inmate if the injury proximately causes death, subject to all of the following conditions:~~

~~(1) The inmate was not injured as the result of an assault in which the inmate was the initial aggressor, or as the result of the intentional act of the inmate injuring himself or herself.~~

~~(2) The inmate shall not be entitled to any temporary disability indemnity benefits while incarcerated in a state prison.~~

~~(3) No benefits shall be paid to an inmate while he or she is incarcerated. The period of benefit payment shall instead commence upon release from incarceration. If an inmate who has been released from incarceration, and has been receiving benefits under this section, is reincarcerated in a city or county jail, or state penal or correctional institution, the benefits shall cease immediately upon the inmate's reincarceration and shall not be paid for the duration of the reincarceration.~~

~~(4) This section shall not be construed to provide for the payment to an inmate, upon release from incarceration, of temporary disability benefits which were not paid due to the prohibition of paragraph (2).~~

~~(5) In determining temporary and permanent disability indemnity benefits for the inmate, the average weekly earnings shall be taken at not more than the minimum amount set forth in Section 4453.~~

~~(6) Where a dispute exists respecting an inmate's rights to the workers' compensation benefits provided herein, the inmate may file an application with the appeals board to resolve the dispute. The application may be filed at any time during the inmate's incarceration.~~

~~(7) After release or discharge from a correctional institution, the former inmate shall have one year in which to file an original application with the appeals board, unless the time of injury is such that it would allow more time under Section 5804 of the Labor Code.~~

~~(8) The percentage of disability to total disability shall be determined as for the occupation of a laborer of like age by applying the schedule for the determination of the percentages of permanent disabilities prepared and adopted by the administrative director.~~

~~(9) This division shall be the exclusive remedy against the state for injuries occurring while engaged in assigned work or work under contract. Nothing in this division shall affect any right or remedy of an injured inmate for injuries not compensated by this division.~~

~~(b) The Department of Corrections shall present to each inmate of a state penal or correctional institution, prior to his or her first assignment to work at the institution, a printed statement of his or her rights under this division, and a description of procedures to be followed in filing for benefits under this section. The statement shall be approved by the administrative director and be posted in a conspicuous place at each place where an inmate works.~~

~~(c) Notwithstanding any other provision of this division, the Department of Corrections shall have medical control over treatment provided an injured inmate while incarcerated in a state prison, except, that in serious cases, the inmate is entitled, upon request, to the services of a consulting physician.~~

~~(d) Paragraphs (2), (3), and (4) of subdivision (a) shall also be applicable to an inmate of a state penal or correctional institution who would otherwise be entitled to receive workers' compensation benefits based on an injury sustained prior to his or her incarceration. However, temporary and permanent disability benefits which, except for this subdivision, would otherwise be payable to an inmate during incarceration based on an injury sustained prior to incarceration shall be paid to the dependents of the inmate. If the inmate has no dependents, the temporary disability benefits which, except for this subdivision, would otherwise be payable during the inmate's incarceration shall be paid to the State Treasury to the credit of the Uninsured Employers Fund, and the permanent disability benefits which would~~

1 otherwise be payable during the inmate's incarceration shall be
2 held in trust for the inmate by the Department of Corrections
3 during the period of incarceration.

4 For purposes of this subdivision, "dependents" means the
5 inmate's spouse or children, including an inmate's former spouse
6 due to divorce and the inmate's children from that marriage.

7 (e) Notwithstanding any other provision of this division, an
8 employee who is an inmate, as defined in subdivision (c) of
9 Section 3351 who is eligible for vocational rehabilitation services
10 as defined in Section 4635 shall only be eligible for direct
11 placement services.

12 SEC. 3. Section 3371 of the Labor Code is repealed.

13 3371. If the issues are complex or if the inmate applicant
14 requests, the Department of Corrections shall furnish a list of
15 qualified workers' compensation attorneys to permit the inmate
16 applicant to choose an attorney to represent him or her before the
17 appeals board.

